

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O.Rt. No. 29/Lab/AIL./J/2009, dated 24th March 2009)

NOTIFICATION

Whereas, the Award in I.D.No.5/2002, dated 21-1-2003 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Swadeshi Cotton Mills, Puducherry and Swadeshi Panchalai Thozhilalar Urimai Padukappu Sangam over reinstatement and regularisation of 8 workers has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O.Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,

Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru G. RAJASURIA, M.L., D.F.L.,
Presiding Officer-cum-
II Additional District Judge.

*Tuesday, the 21st day of January, 2003***I.D.No. 5/2002**

The President,
Swadeshi Panchalai Thozhilalar
Urimai Padhukappu Sangam,
128, Laporte Street,
Pondicherry.

*.. Petitioner**Versus*

The General Manager,
M/s. Swadeshi Cotton Mills,
Post Box No. 3,
Pondicherry.

.. Respondent

This industrial dispute coming on 17-1-2003 for final hearing before me in the presence of Thiru T. Gunasegaran, Advocate for the petitioner and Thiru R. Padmanabhan, Advocate for the respondent, on hearing both sides and upon perusing the documents and having stood over till this day for consideration, this court delivered the following:

AWARD

This industrial dispute has been referred to as per the G.O.Rt.No.5/2002/Lab./L, dated 18-1-2002 for adjudicating the following:

(1) Whether the claim of the union for reinstatement and regularisation of the following workers by the management of M/s. Swadeshi Cotton Mills, Pondicherry is justified? If so, to what relief, the said workmen are entitled to ?

- | | |
|----------------|------------------|
| 1. Natarajan | 5. P. Venkatesan |
| 2. R. Krishnan | 6. L. Arochiaraj |
| 3. K. Ethiyen | 7. V. Albert |
| 4. T. Amudha | 8. N. Elancheran |

(2) To compute the relief, if any, awarded in terms of money if it can be so computed.

2. The facts giving rise to the filing of this industrial dispute as stood exposed in the claim petition would run thus:

The respondent Swadeshi Cotton Mills has been functioning in Pondicherry for more than 100 years having 460 employees. The canteen therein for the workers has been functioning for more than three decades. The following 8 workers (1) Natarajan *alias* James, (2) R. Krishnan, (3) K. Ethiyen, (4) D. Amudha, (5) P. Venkatesan, (6) K. Arochiaraj, (7) V. Albert, and (8) Elanseran have been working for more than two decades. Those employees were given P.F. facilities and ESI facilities and they were provided with all facilities which have been provided to other employees of the respondent mill. The monthly salary of those workers except Amudha is Rs. 3,750 and for Amudha it is Rs. 3,000. Those workers have put in more than 300 days of work continuously in a year. On 8-9-2001 the respondent mill was laid off and production was stopped. Those employees of the canteen were asked to leave the canteen without any employment. Lay-off facilities were not extended to those eight workers. On 29-12-2001 the respondent

mill resumed production and those eight workers were also given the same employment in the canteen. The petitioner's association on behalf of those workers demanded the lay-off benefits for those eight workers and before the Conciliation Officer, conciliation went on and it ended in failure. The contention of the respondent that those eight workers were casual workers and they could not be given reemployment as regular workers. Hence this industrial dispute.

3. Per contra, traversing the averments in the claim petition, the respondent filed the counter with averments which run thus:

There was no direct relationship of employer and employee between the respondent and the petitioner. The salary were disbursed by the respondent for and on behalf of the contractor who engaged those eight workers. P.F and E.S.I. contributions were made by the respondent in its capacity as principal employee for and on behalf of the contractor. The contractor only engaged those eight workers in the canteen. The respondent mill was taken over from the private party by the National Textile Corporation (Tamil Nadu and Pondicherry) under the private management. The canteen was run by the contractors only. Subsequent to the take over also, the same system was followed. While so, the contractor abandoned his contract without prior notice and left those workers without job. At the request of various trade unions including the petitioner's trade union, the respondent permitted those workers to run the canteen as casual canteen coolies; on daily rated basis wages were paid. The workman Natarajan *alias* James being the Cook was paid a sum of Rs. 125 per day and the other petitioners were paid Rs. 100 per day. However, wages were paid on monthly basis. On 8-9-2001, the respondent mill was ceased to function and the workmen of the mill were laid off. Since there were no work for the canteen employees, no work was given to them. As such, those workmen were engaged only as casual labourers by the respondent. Those workers also filed a civil suit in which the respondent filed a detailed written statement. Hence this industrial dispute is untenable.

4. On 29-12-2001 after resuming production, those eight workers were given employment in the same capacity as casual workers. The respondent also called for tenders from the eligible contractors to run the

canteen. However, those workers filed the suit as against the measure taken by the respondent. Accordingly, the respondent prayed for dismissal of the industrial dispute.

5. During enquiry, on consent, Ex.A1 to A16 were marked on the petitioner's side and on the respondent side, Ex. B1 and Ex. B2 were marked on consent. Neither side adduced oral evidence.

6. *The points for consideration are:*

(1) Whether those 8 workmen referred to in the industrial dispute are entitled to be declared as regular workers and to continue in service as such as regular workers under the respondent with lay-off benefits during the said lay-off period?

(2) To what relief ?

7. *On point No.1:*

The factual matrix would expatiate that as on date, those eight workmen referred to in the industrial dispute are working in the respondent mill as canteen workers. The bone of contention of the petitioner is that those eight workers should be treated as regular workers and they should also be paid the lay-off compensation during the said lay-off period. Admitting the fact of those eight workmen working in the canteen for a pretty long time, the respondent would specifically contend that those eight workers worked under the contractor earlier and thereafter they were engaged by the respondent for running the statutory canteen as per the Factories Act, 1948. From the very plea of the respondent, it is crystal clear that the respondent mill which is having more than 250 workers is under the statutory obligation to run a canteen for workers. In such a case, it is crystal clear that running canteen is not optional and it cannot be stated that it is no part of the respondent's duty to run the canteen. Moreover, the respondent itself candidly highlighted that the contractor who was running the canteen abandoned the contract, without any notice and left the workers in the lurch and they were also left high and dry. The respondent could not even specify the name of the contractor and also the period from which the contractor abandoned the contract, the contract; agreement also was not filed before this court. One important fact should not be lost sight of. The respondent mill is being run by the National Textile Corporation and in such a case they were expected to have proper records relating to those matters but no such record has been produced.

8. The learned advocate for the respondent while arguing the matter without mincing words would candidly submit that the respondent could not furnish those details relating to the canteen having been run allegedly by the contractor, etc. It cannot be gainsaid by the respondent that it only run the canteen with the help of those eight workmen. The dispute in fact got boiled down to the effect that the respondent would contend that those eight workers were casual workers, under the respondent in the canteen and not the regular workers and that they could not provide with lay-off facilities and other facilities accorded to the regular employees in the respondent mill. The admission made by the respondent by themselves would be sufficient to adjudge the dispute at hand.

9. Chapter V-A of the Industrial Disputes Act, 1947 deals with the lay-off and retrenchment. Section 25-B defines what is "continuous service". A worker who has put in 240 days in a year could rightly be termed as a worker in continuous service. The other details contained in the definition are not germane for adjudicating the case at hand. The respondent's admissions and the petitioners/workmen's assertion would unambiguously highlight the fact that those eight workmen have put in more than 240 days of work in a year and thereby brought themselves within the definition as contained in section 25-B of the Industrial Disputes Act, 1947. In such a case, it is quite obvious that those eight canteen workers are also entitled for lay-off compensation as per section 25-C of the Industrial Disputes Act, 1947. It is therefore, crystal clear that the respondent was not justified in refusing to pay the lay-off facilities to those eight workers who admittedly worked for several years continuously before lay-off. Hence those eight workmen are entitled for lay-off compensation for the lay-off period from 8-9-2001 to 29-12-2001 as per section 25-C of the Industrial Disputes Act, 1947.

10. The learned Advocate for the petitioner cited the decision of the Hon'ble Apex Court in "Barat Fritz Werner Ltd. etc. Vs. State of Karnataka -AIR 2001 S.C.1257" to the effect that the contract workers relating to canteen run in a factory wherein 250 workers or above are working shall be deemed to be the workers of the factory establishment. The perusal of the judgement would show that in the State of Karnataka, the Government by a notification abolished the contract

labour in running the canteens in respect of factories having 250 workers or more. The perusal of the said decision would also show that their Lordship made a specific observation that irrespective of the fact that the workers were engaged through contractor in such canteens, the workers would be deemed to be the workers of the factory establishment. Here the case is still the worse because the respondent admitted that the respondent itself engaged them as workers in the canteen after abandonment of contract by the contractor.

11. In view of my findings above, those workmen are entitled to work continuously in the respondent mill and the respondent cannot simply turn them out of work by naming them as coolies on daily rated basis, etc. The term regularisation is having certain significance of its own. But in case of this nature, once the workers are deemed to be workers who have put in continuous service as declared in this case relating to those workmen, they are entitled for proper protection under the Industrial Disputes Act. There is no point in, from the available facts, simply declaring those 8 workers as regular workers, because, regularisation could be effected by the administration depending upon the permanent posts and the vacancies concerned. On the petitioner side, nothing could be highlighted as to how as on this date necessarily the respondent should treat them as regular workers. As such, in the absence of such details, this court, oblivious of the details and the factual situation, cannot compel the respondent to treat them as regular workers but those eight workers should be treated as workers who have put in continuous service for all statutory and other benefits as contemplated under the Industrial Disputes Act, 1947.

12. Ex.A1 to A16 are also relating to the correspondence and the identity cards of the workmen and the ESI facilities accorded to those workmen and in view of the admissions made by the respondent, those are all formal documents in this case.

13. Ex.B1 is the photocopies of several minutes recorded on several dates of meetings held between the respondent on one side and the trade unions on the other side relating to canteen workers. In view of the admissions made by the respondent those two documents also have become only formal documents. In the result, the industrial dispute is decided and the award is passed as follows:

Those eight workers *viz.*, (1) Natarajan *alias* James, (2) R. Krishnan, (3) K. Ethiyayan, (4) D. Amudha, (5) P. Venkatesan, (6) K. Arokiaraj, (7) V. Albert and (8) Elanseran are deemed to be workers who have put in continuous service under the respondent mill for several years and they are entitled for all benefits under the Industrial Disputes Act, 1947 and other labour legislations and they are also entitled for lay-off benefits during the lay-off period between 8-9-2001 and 29-12-2001 and those workers are entitled to continue in service and they cannot be at any point of time terminated as casual coolies, etc.

14. *On point No.2:*

In view of the reasons given for deciding the aforesaid point, this industrial dispute is partly allowed in favour of the petitioner as follows:

Those eight workers *viz.*, (1) Natarajan *alias* James, (2) R. Krishnan, (3) K. Ethiyayan, (4) D. Amudha, (5) P. Venkatesan, (6) K. Arokiaraj, (7) V. Albert and (8) Elanseran are deemed to be workers who have put in continuous service under the respondent mill for several years and they are entitled for all benefits under the Industrial Disputes Act, 1947 and other labour legislations and they are also entitled for lay-off benefits during the lay-off period between 8-9-2001 and 29-12-2001 and those workers are entitled to continue in service and they cannot be at any point of time terminated as casual coolies, etc.

However, in the circumstances of the case, there is no orders as to cost.

Dictated to the stenographer, transcribed by him corrected and pronounced by me in the open court on this the 21st day of January, 2003.

G. RAJASURIA,

Presiding Officer, Labour Court-cum-
II Additional District Judge, Pondicherry.

List of Petitioner's witnesses examined : Nil.

List of Respondent's witnesses examined : Nil.

List of Petitioner's exhibits marked :

- Ex. A 1 17-12-2002 Photocopy of the ESI I.D card,
relating to worker James.
- Ex. A 2 17-12-2002 Photocopy of the ESI I.D card,
relating to worker R. Krishnan.

- Ex. A 3 17-12-2002 Photocopy of the ESI I.D card,
relating to worker K. Ethiyayan.
- Ex. A 4 17-12-2002 Photocopy of the ESI I.D card,
relating to worker Amudha.
- Ex. A 5 17-12-2002 Photocopy of the ESI I.D card,
relating to worker P. Venkatesan.
- Ex. A 6 17-12-2002 Photocopy of the ESI I.D card,
relating to worker Arokiaraj.
- Ex. A 7 17-12-2002 Photocopy of the ESI I.D card,
relating to worker Albert.
- Ex. A 8 17-12-2002 Photocopy of the ESI I.D card,
relating to worker M. Elanseran.
- Ex. A 9 17-12-2002 ESI benefit payment slip,
relating to worker James.
- Ex. A 10 17-12-2002 ESI benefit payment slip, relating
to worker James.
- Ex. A 11 17-12-2002 Copy of the representation given
by the canteen workers of the
respondent mill to the respondent.
- Ex. A 12 17-12-2002 Photocopy of the report sent
by the petitioner to the Conciliation
Officer, dated 24-9-2001.
- Ex. A 13 17-12-2002 Copy of the representation,
dated 29-10-2001 by the petitioner
to the respondent.
- Ex. A 14 17-12-2002 Photocopy of the failure report,
dated 28-12-2001.
- Ex. A 15 17-12-2002 Photo copy of the notification,
dated 18-1-2002 of the Labour
Department.
- Ex. A 16 17-12-2002 Copy of the representation,
dated 1-1-2002 by the petitioner
to the respondent.

List of Respondent's exhibits marked :

- Ex. B 1 8-1-2003 Photocopies of various minutes
recorded on various dates held
between the petitioner union
and the respondent.
- Ex. B 2 8-1-2003 Photocopy of the casual coolie
attendance particulars in the
respondent mill for June, 2001.

G. RAJASURIA,

Presiding Officer, Labour Court-cum-
II Additional District Judge, Pondicherry.